

Chapter 2

Pre-Audit and Effective Interview Techniques

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**INTERNAL REVENUE SERVICE
TAX EXEMPT AND GOVERNMENT ENTITIES**

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Pre-Audit Techniques

Overview

Introduction

Agents are assigned returns for examination after the returns have been selected, graded and assigned to a group. At that time, the agent assumes certain procedural responsibilities for that case.

During the pre-audit analysis, you must verify the statute of limitations for the assigned return, review the return, research data available on IDRS and determine the scope of the examination. An agent's pre-audit analysis continues with setting up the audit appointment, explaining and protecting the rights of the taxpayer, verifying that Form 2848, *Power of Attorney and Declaration of Representative*, has been properly completed and applying the quality standards for examination cases.

Sources of Planning

Introduction

Before conducting an exam of the Form 5500, there are many planning tools that an agent can use to construct the plan's pre-audit review. In addition to organizing an audit, pre-audit planning identifies potential issues and determines the scope of the audit. Sources available to an agent include: IDRS, the RICS version of Form 5500, the TE/GE EDS System, the RICS Classification Sheet and the IRM.

- IRM Part 4, Section 4.71.1.4 – Pre-Contact Analysis
-

Sources of Planning - IDRS

IDRS

Integrated Data Retrieval System (IDRS) is an excellent source of information about the plan sponsor and the plan. Agents can obtain a vast amount of plan information prior to even contacting the plan sponsor for the audit. If an agent does not have IDRS access, Form 6882 should be completed and forwarded to the group manager with any of the following commands. The following chart lists some common IDRS command codes and the information that can be retrieved from internal sources. See Exhibit 1 for a more extensive list of IDRS/CFOL Command Codes.

IRM Part 4, Section 4.71.2 - Overview of IDRS

IRM Part 4, Section 4.71.1.4(10) – Useful IDRS Command Codes/Description

IRM Part 2, Section 2.3.64 – Command Code EMFOLL

Document 6209 (ADP Book) – Sections 13 & 14 – Codes to interpret IDRS

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Sources of Planning - IDRS Continued

Command Code	Description
EMFOLT	<p><u>Statute of Limitation (SOL) Analysis</u>: The date next to Transaction Code (TC) 150 is the date that the 5500 was filed – add 3 years for the SOL, then compare the calculated SOL date to the ASSED date on AMDISA and to the SOL listed on the Classification Sheet. All should agree. Initial the SOL date or document the Case Chronology Record (CCR) that the SOL per the Classification Sheet has been reconciled to EMFOLT TC 150 posting date, or include a comment regarding the SOL analysis in a pre-audit workpaper.</p> <p>TC 154 posting indicates that a Form 5330 was filed for that period, the amount of tax, and the applicable code section.</p> <p>TC 424 means the AIMS account is pending. TC 420 following the TC 424 for a specific tax period and plan number indicates the account is fully established on AIMS. When the account is closed from AIMS the TC will reverse to a TC 421 and the disposal code will be displayed in the right hand margin following the re-file DLN. Thus, TC 421 indicates that the return was previously examined and reflects the corresponding disposal code. If a prior audit was performed within 3 years and a “no-change” resulted, the examiner should consult with the group manager to possibly survey the case.</p>
EMFOLL:	<p><u>Plan Module Data</u>: Gives information regarding the plan sponsor including phone number, and plan history, including favorable determination letter (FDL) information, type of plan, plan effective date, application status date and plan termination. See IRM 2.3.64 for the IDRS part of the IRM to translate the codes on the EMFOLL.</p>
EMFOLI:	<p>Lists the plans maintained by the employer and the years for which a Form 5500 was filed. This is important to know for purposes of IRC sections 404, 415, 416, etc.</p>

Continued on next page

Sources of Planning - IDRS, Continued

AMDISA	AMDISA with the EIN reflects all Forms 1120 and 5330 that are being examined with the corresponding SOL date. AMDISA with the plan EIN followed by a “P” reflects all examined Forms 5500 with the corresponding SOL date. After an Form 5500 exam case is assigned, the agent is responsible for preparing Form 5595, so the secretary can update the status code from 10 to 12 as soon as the first contact is made with the taxpayer. Per IRM 4.71.12, the AMDISA print should be attached to the left side of the Form 5650 and/or Form 5599.
INOLES	<p>INOLES with the employers EIN provides the most current name, address, and filing requirements for the entity. It may also indicate EIN numbers for subsidiaries.</p> <p>INOLES with the plan EIN followed by a “P” provides a list of all plans maintained. INOLET with the employers EIN provides the same information as INOLES, but will display this information for the BMF and the EPMF with just one input by the secretary.</p>
BMFOLI	<p>BMFOLI lists all business returns filed by the taxpayer, the years for which a transcript can be requested, and the years for which the return can be viewed by obtaining a BRTVU print. If an AIMS account has been established you will see a MF “L” freeze on the right hand margin of BMFOLI with the Service Center where the AIMS account has been established.</p> <p>Forms 5330 with a BMF SSN need a file source “V” following the SSN when requesting CC BMFOL (i.e. 123-45-6789V).</p>
BMFOLT	BMFOLT is the transcript of a BMF return such as Form 1120 or Form 5330. The filed date, SOL date and amounts of tax, and penalties assessed and paid are reflected.

Sources of Planning – Form 5500

Introduction

Each exam file contains a Return Inventory Classification System (RICS) generated return. An abundance of information about the plan and its administration can be obtained during the pre-audit review by analyzing the RICS version of Form 5500. The examiner should consider any large, unusual and/or questionable items when analyzing the Form 5500 during the pre-audit analysis. Notations of these items should be documented in the pre-audit analysis worksheet and then explained in the audit worksheets.

- IRM Part 4, Section 4.71.1.4 – Pre-Contact Analysis

Form 5500

Some line items on the Form 5500 could indicate potential audit issues such as prohibited transactions, minimum funding, or IRC 72(p) distributions.

Note in the pre-audit worksheets any lines that were left blank.

Listed below are Forms 5500 line items and the specific information that can be noted during the pre-audit analysis. Information obtained can be used to develop an audit plan, identify special areas to review or to possibly limit the scope of an audit.

- IRM Part 4, Section 4.71.1.3– Examination Objectives and Development of Issues

Form 5500 Part IA

Form 5500 Part IA identifies the type of plan:

- Multiemployer plan

Note: Multiemployer plans are subject to the same requirements as other plans including but not limited to eligibility, vesting, J&S and distribution rules. Vesting and IRC 415 apply differently. IRM 4.72.14

- Single employer plan

- Multiple-employer plan

Note: A Multiple-employer plan is a plan maintained by 2 or more employers who are not related per IRC 414(b), (c) or (m). There could be some ownership % but not enough to be a controlled group. See IRC 413(c).

Continued on next page

Sources of Planning – Form 5500, Continued

Form 5500 Part IB	If the return is the first return, final return, an amended return, or the return for a short plan year, it will be identified in Part IB of Form 5500.
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Part IB(3) identifies whether or not the plan terminated. This is important to know during the Pre-Audit since the plan may need to be reviewed for current law in effect at the date of plan termination. (See Notice 87-57). Also, if the plan terminated during this plan year or a prior plan year, concentrate on plan distributions and vesting. Also review the prior plan year 5500 for the number of plan participants who were dropped during the plan year for indications of a partial termination. See IRM 7.12.1 for Plan Termination Guidelines.

Form 5500 Part IC	Part IC of Form 5500 identifies whether or not the plan is collectively bargained (union). If so, revise workpaper preparation and audit scope since IRC 401(a)(4), and 416 do not apply.
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Form 5500 Part II Summary	Part II of Form 5500 covers basic plan information and a list of all attached Schedules. A summary of Part II line items and selected Schedules follows.
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Form 5500 Part II, lines 1 through 5	Form 5500 Part II, lines 1 through 5 provide entity information as well as the administrator's name, changes in plan name and return preparer information.
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Note: Of particular interest is line 2d which identifies the type of employer to get an idea of the company. If a service company (doctor, lawyer, etc.), do they use services of leased employees or other employees (possible coverage issue)? If a manufacturing company, are there other locations (also a possible coverage issue)? Business Codes are listed in Document 6479 (yellow handbook).

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Sources of Planning – Form 5500, Continued

Form 5500 Part II, lines 6 & 7 Form 5500 Part II, lines 6 and 7 provide participant information such as the number of active, retired or separated participants, terminated participants without full vesting and terminated participants for whom Schedule SSA must be filed are entered.

An example of how information on line 7h can be utilized is as follows:

- a. If a large # of participants terminated in relation to the # of participants at BOY (line 6), consider the existence of a possible partial termination per IRC 411(d)(3). If terminations are significant, a question should be incorporated into the initial interview as to why a large number of participants terminated during the plan year. See IRM 7.12.1.

Form 5500 Part II, line 8 Form 5500 Part II, line 8 provides information about plan characteristics. Defined benefit features are entered for type of benefit and PBGC coverage. A defined contribution plan must specify features including new comparability, target benefit arrangement, money purchase or stock bonus plan, 401(k) & (m) arrangement. Master and prototype arrangements are specified as well as controlled group membership, coverage of self-employed individuals and one-participant plan. See 5500 instructions for a list of Codes.

Examples of how this information can be utilized are as follows:

- a. If a 401(k) plan, prepare workpapers specific to ADP and /or ACP Test, and the eligibility, vesting, and contributions sections of the workpapers should address 401(k).
- b. If plan covers self-employed individuals, prepare deduction workpapers specific to the self-employed participant in addition to the other participants.

Continued on next page

Sources of Planning – Form 5500, Continued

Form 5500 Part II, line 8 (continued)	Utilize the appropriate examination guidelines located in IRM 4.72. For example, IRM 4.72.2 relates to Cash or Deferred Arrangements (CODAs) and IRM 4.72.3 relates to Employee and Matching Contributions.
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Form 5500 Part II, line 9	Form 5500 Part II, line 9 covers the plan funding arrangement. All applicable funding and benefit arrangements should be checked. If insurance or 412(i) contracts are used as the funding vehicle and to provide benefits, Schedule As will be provided.
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Form 5500 Part II, line 10	This line shows the schedules attached. Some schedules may not be generated with the RICS return. This is why it is important to request that a copy of the employer's original Form 5500 be available at the audit.
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See Form 5500 instructions, page 11 "Quick Reference Chart Form 5500 Schedules and Attachments" for a description of Form 5500 schedules and which plans must file them.

Form 5500 Schedule A	Form 5500 Schedule A contains insurance information. If Schedule A is filed, it indicates that plan has insurance contracts. Prepare trust asset workpaper (Item K on 5772/5773) to note documentation of the Trusts' name on the insurance contract.
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Form 5500 Schedule B	Form 5500 Schedule B contains actuarial information. This schedule is filed for DB Plans only.
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If Schedule B was filed, prepare a workpaper for IRC 412 (Item J of 5772/5773).

If Schedule B shows a funding deficiency at the beginning of the year, make note to verify that it was paid during your plan year. Verify that the employer paid IRC 4971(a) excise tax.

Note: EMFOLT Transaction Code (TC) 154 indicates that a Form 5330 has been filed.

Continued on next page

Sources of Planning – Form 5500, Continued

**Form 5500
Schedule B
(CONTINUE
D)**

If Schedule B shows a funding deficiency at the end of the year, make note to verify whether or not it was truly late per IRC 412(c)(10) since Form 5500 is due 7 months after the plan year end and IRC 412(c)(10) allows funding until 8 ½ months after plan year end.

If the plan does have a funding deficiency, be prepared to explain funding requirements (IRC 412(b)) and the excise tax due (IRC 4971(a) and (b)). Take a Form 5330 with instructions to the audit, or refer the employer to the website to download the form.

A brief explanation of certain lines items is as follows:

- a. Lines 1a and b-- Provides the current value and actuarial value of the assets. Statement by Enrolled Actuary is required and may be qualified. The qualification must be explained in an attachment.
- b. Lines 1c and d-- Completed with the accrued liability, the “RPA ‘94” and the “OBRA ‘87” current liability, the expected increase in the current liability and expected plan disbursements.
- c. Line 2a and b-- States the current value of the assets and the “RPA ‘94” current liability as of the first day of the plan year. Additional information breaks out the current liability for vested, active, retired and terminated participants.
- d. Line 3 and 4-- Shows all employer and employee contributions to the plan.
- e. Line 5 and 6—Provides the actuarial cost method and the actuarial assumptions to calculate the required employer contributions.
- f. Line 7-- Lists new amortization bases established in the current plan year.
- g. Lines 8 and 9-- Provides information on funding waivers, extensions and alternate funding methods
- h. Line 10-- Contribution required to avoid a funding deficiency is entered here, if applicable.
- i. Line 11-- A change in actuarial assumptions is reported and a justification for the change is attached.

Continued on next page

Sources of Planning – Form 5500, Continued

**Form 5500
Schedule D**

Schedule D is applicable for any plan that has assets held by a direct filing entity. A direct filing entity can be any of the following:

- a. Master trust investment account (MTIA)
 - b. Common/collective trust (CCT)
 - c. Pooled separate account (PSA)
 - d. 103-12 investment entity (103-12 IE)
 - e. Group insurance arrangement (GIA)
-

**Form 5500
Schedule E**

Schedule E is used to report ESOP annual information.

This schedule satisfies the reporting requirements of Code section 6047(e) for an annual information report for an employee stock ownership plan. All plans that contain ESOP benefits must file this schedule. If more than one securities acquisition loan is outstanding, a Schedule E and an attachment must be filed for each additional loan.

Lines 6 through 15--Information is entered here on a “back to back loan”, repayment terms, an immediate allocation loan, loans that comply with the transition rules provided by the Omnibus Budget Reconciliation Act of 1989, amount of interest paid to the corporate lender on a back to back loan and the dividend rate used for common and preferred stock.

**Form 5500
Schedule G**

Schedule G is used to report loans, fixed income obligations and leases in default or determined to be uncollectible as of the end of the plan year on this schedule.

Of particular interest is Part III. Transactions described in Code section 4975(c) involving a party-in-interest described in Code section 4975(e) must be reported in this section.

Continued on next page

Sources of Planning – Form 5500, Continued

**Form 5500
Schedules H/I
Overview**

Schedules H and I provide financial information. Schedule H is required for a plan with 100 or more participants as of the beginning of the plan year. Schedule I is for plans with less than 100 participants. An exception is provided if the plan filed a Schedule I to meet the small plan requirements in the prior year. If the number of participants covered is less than 121, the plan is permitted to file a Schedule I for the current year.

**Form 5500
Schedule H**

A plan, MTIA, CCT, PSA 103-12 IE or GIA covering 100 or more participants as of the beginning of the plan year files this schedule. (See exception outlined under large plan filing requirements.) Fully insured plans are also exempt from filing this schedule.

The sections of Schedule H are broken down as follows:

1. Part I— Asset and liability statement for the plan year is entered here.
2. Part II— Income and expense statement is required.
3. Part III— Accountant's opinion is required.
4. Part IV— Transactions During Plan Year:
 - a. Items 4a through 4k contain information important to the audit such as:
 - The sponsor must indicate if participant contributions were not transmitted to the trust within the time required.
 - Loans, fixed income obligations and leases in default are noted.
 - If a prohibited transaction is disclosed in this section, Schedule G, Part III must also be attached.
 - Fidelity bond information and any loss caused by fraud or dishonesty appear here.
 - Assets or noncash contributions whose current value is not readily determined are cited.
 - All transactions in excess of 5% of the current value of plan assets must be noted, as well as unusual assets held for investment.
 - If a distribution of all plan assets occurred, it is noted here.

Continued on next page

Sources of Planning – Form 5500, Continued

**Form 5500
Schedule H
(continued)**

- b. Items 5a and 5b contain information important to the audit such as:
- Termination information.
 - Transfer of assets to another.
-

**Form 5500
Schedule I**

Schedule I is required for plans covering fewer than 100 participants as of the beginning of the plan year. Fully insured plans are exempt from filing this schedule.

The sections of Schedule I are broken down as follows:

1. Part I— Small plan financial information on assets and liabilities
 - a. Income, expenses and transfers for the plan year are entered here.
 - b. Benefits paid, corrective distributions and deemed distributions of participant loans appear here.
 - c. Item 3 requires asset information if the plan held assets in the form of partnership/joint venture or employer real property.
 - d. Item 3c specifies employer securities, participant loans, other loans and tangible personal property.
 2. Part II— Information important to the audit is entered in this section such as:
 - a. Items 4a through 4k contain information important to the audit such as:
 - The sponsor must indicate if participant contributions were not transmitted to the trust within the time permitted.
 - Prohibited transactions, as well as, loans, fixed income obligations and leases in default are specified.
 - Fidelity bond information and any loss caused by fraud or dishonesty appear here.
 - Assets or noncash contributions whose current value is not readily determined are cited.
 - Any single security, debt, mortgage, parcel of real estate or partnership/joint venture that constitutes 20% or more of total plan assets is entered here.
-

Continued on next page

Sources of Planning – Form 5500, Continued

**Form 5500
Schedule I
(continued)**

- If a distribution of all plan assets occurred, it is noted here.
 - b. Items 5a and 5b contain information important to the audit such as:
 - Termination information.
 - Transfer of assets to another plan.
-

**Form 5500
Schedules H/I
Review Tips**

Target investments that could be Prohibited Transactions such as “other” receivables, “other” assets, and loans that are other than to plan participants.

Ask questions in the initial interview such as:

- Does the plan provide for participant loans or loans as investments?
- If loans were made as investments, who were they made to?
- Is the loan recipient a disqualified person? (Present the definition of disqualified person in layman’s terms). Have IRC 4975(e)(2) definition of disqualified person available.

If participant loans are shown:

- a. Prepare workpaper for IRC 4975(d)(1) to address whether a loan made to a disqualified person who is also a plan participant meets the exception from being a prohibited transaction (PT) per IRC 4975(d)(1).
- b. Also, if participant loans exist, prepare a workpaper addressing compliance with the requirements of IRC 72(p).

If there are liabilities listed on the trust balance sheet, make a note during the pre-audit analysis to ascertain what the liabilities are.

Make a note in the pre-audit workpapers or initial interview to verify the sources of “other interest” or “other income” for the possibility of unrelated business income under IRC 512.

Make a note in the pre-audit workpapers or initial Interview to inquire about “non-cash contributions”. This type of transaction could be a PT.

Continued on next page

Sources of Planning – Form 5500, Continued

**Example of
information
found on
Schedule I**

When reviewing Form 5500, Schedule I, you notice that Part I, line 2g indicates that the plan had “Certain deemed distributions of participant loans”.

- This is an indication that the plan may have self-directed investments (in addition to participant loans). The instructions to Form 5500, Schedule I state that a defaulted participant loan should be reported here only if it is a participant directed investment (“earmarked loan”) and is not to be reported here if the loan is a general trust investment.
- Note also that if a loan is reported as a deemed distribution on Schedule I –Part 1, line 2g, it should not be reported on Schedule G as a loan in default or uncollectible.
- Also, the deemed distribution (loan) should be reported in the trust’s beginning of year assets, but not in the end of year assets.
- The examiner should notate this item on pre-audit workpapers and address it again during review of trust assets (Item K of the Forms 5772/5773).

**Form 5500
Schedule P**

Form 5500 Schedule P is filed by every trustee of a trust created as part of an employee benefit plan as described in Code section 401(a). Filing of this schedule normally starts the running of the statute of limitations.

Continued on next page

Sources of Planning – Form 5500, Continued

**Form 5500
Schedule R**

Defined benefit plans and plans subject to the minimum funding standards of Code section 412 are required to file Form 5500 Schedule R.

Information contained on Schedule R includes:

1. Part I— Contains information on distributions from the plan.
 - a. Distributions entered on line 1 should include only amounts to purchase an annuity contract from an insurance company or the distribution of life insurance contracts to a participant.
 - b. Part I, line 3— Indicates the living and deceased participants who received lump sum distributions or whose benefits were distributed in the form of a direct rollover to a qualified plan or an individual retirement account.
2. Part II— Funding information for the all plans subject to Code section 412 is included in this part.
3. An amendment adopted in compliance with Code section 412(c)(8), amortization of amounts resulting from a waiver, the minimum funding amount, the actual employer contribution and the accumulated funding deficiency should be reflected in this section.
4. A change in funding method is noted in Items 7 and 8.
5. Part III— A defined benefit plans should indicate if an amendment has increased the value of benefits, including a change in the rate of accrual, more rapid vesting and earlier eligibility in this section.

Continued on next page

Sources of Planning – Form 5500, Continued

**Form 5500
Schedule SSA**

Form 5500 Schedule SSA is used to report deferred vested benefits. All participants with deferred vested benefit rights must be reported in the year of separation from service or in the following plan year. A participant will be reported only once unless there is a revision to his status.

**Access to
Forms 5500
and Schedules**

To review Form 5500 and Schedules with instructions, go to the Form & Pubs section of the Intranet. Select the “Catalog” option and input Form 5500.

RICS versions of Forms 5500 filed by taxpayers can be obtained through EP Classification.

Case Grade

After reviewing the Form 5500, verify the accuracy of the computer generated case grade. If the case should be upgraded based on plan characteristics and complexities, confer with the group manager. Managerial approval is required before changing the case grade.

- IRM 7.11.2.5 Case Grading
-

Sources of Planning – EP Classification Sheet

Employee Plans Classification Sheet

The EP Classification Sheet contains information that can be useful during the pre-audit review. It is divided by sections:

1. The first section gives filing information about the return: return due date, statute of limitations date (SOL Date), and the plan sponsor's current address. This section will include a note that the sponsor has requested a waiver or applied for a Voluntary Compliance Resolution Program letter if in fact, the sponsor has applied for either.
 2. The second section contains condition code selections that were made through RICS. The condition code, purpose code and project code identify the reason the return was selected for audit. An explanation of these codes can be found in Document 6476.
 3. The middle section lists any Business Master File (BMF) /Audit Information Management System (AIMS) information for the EIN. The information includes: plan number, plan year, MFT code, status code, and the disposal code for a prior audit.
 4. The last section lists Master File (MF) condition codes and descriptions that are generated from the Employee Plans Master File (EPMF).
-

Sources of Planning – TE/GE EDS System

Introduction

The IRS EDS system contains plan favorable determination letter (FDL) information that was previously available on microfiche (now outdated). A plan's prior FDL will be useful to ascertain whether or not the plan has been amended for current law. The date of the prior FDL should be noted in pre-audit workpaper. If no prior FDL exists, the agent should be prepared to review the plan document for its compliance with IRC 401(a). The prior FDL may also contain caveat #6 – "This determination is subject to your adoption of the proposed amendments submitted in your letter dated ____". If this caveat appears on a plan's prior FDL, the agent should make a note to verify at the audit, that the proposed amendment was adopted in accordance with IRC 401(b) (within 91 days of the date of the FDL).

Continued on next page

Sources of Planning – TE/GE EDS System, Continued

**Prior
Determination
Letter**

To find out if the plan has a FDL:

1. Go into the TE/GE system
 - a. Choose option (2) – “EP EDS”
 - b. Choose option (3) – “Inventory Control System”
 - c. Choose option (1) – “Query/Update Master Record and Status”
 - d. Choose option (1) – “Research Only”
 - e. Input the EIN and Plan #
 - f. Select by pressing F1

Note: If “F2 Next” appears at the bottom of screen, it means that there is another record

2. The Closing Transmittal Sheet will appear for the last FDL that the plan received. This Sheet contains relevant information for an audit:
 - a. The effective date of the plan
 - b. The date that FDL was issued
 - c. The plan’s vesting code
 - d. The law indicator:
 - G = GUST 1 (Reliance for GATT, USERRA, SBJPA, & TRA 97)

Continued on next page

Sources of Planning – TE/GE EDS System, Continued**Prior determination letter**
(continued)

- H = No reliance for GATT, USERRA, SBJPA, & TRA 97, except as in Opinion/Notification Letters.
- I = No reliance for GATT, USERRA, SBJPA, & TRA 97
- K = Reliance for GATT, USERRA, SBJPA, & TRA 97 and CRA 00

Printing a copy of the prior determination letter

To print a copy of the prior FDL:

1. Obtain the DLN or Case # from the closing transmittal above
2. Follow above steps through step 3
3. Choose option (2) – “Reprint a Letter”
4. Input the DLN and Letter 835 or Letter 1132
5. Print as you would for a closing letter (input your specialist #).

Pending determination letter

If a current application is pending on EDS:

- A closing transmittal will appear but no closing information fields will be completed.
- The status code will be “52” instead of “00” or “01”.
- The closing transmittal will also identify the specialist working the determination case by listing a specialist number.
- If TE/GE EDS System or EMFOLL reveals that a Form 5300 application is open, the agent should not close the examination without first ensuring that a favorable determination letter will be issued. However, the group manager may approve closing the examination without waiting for the favorable determination letter to be issued by indicating approval on the Form 5464.

Pre-Audit Techniques

Introduction

Based upon the information you have obtained so far by verifying the statute of limitations, reviewing the RICS return and evaluating IDRS research, you can determine the areas that should be examined, as well as the depth of examination for each area. You have set the groundwork to evaluate the audit potential of your case.

Scope of Examination

The initial scope of the examination should be limited or expanded to the point where all significant items are properly considered. The scope of an examination may be affected by requirements for specific types of cases, such as bankruptcy cases, DOL referral cases, etc. When the scope of an examination is limited due to managerial direction or results of the pre-audit analysis, the limitation should be documented in the workpapers and signed by the group manager.

After the initial interview and review of the books and records, you may find it necessary to modify the issues to be examined.

Determining the scope of your audit involves the following fundamental considerations:

- LUQ (Large, unusual or questionable) items
 - Materiality
 - Multi-year/related returns
 - Type of plan sponsor
 - Type and complexity of the plan
-

Large, unusual or questionable items (LUQ)

LUQ items may be found on the return or become evident throughout the course of the examination. Agents should identify any LUQ items appearing on the return, which, if left unexplained, may create questions regarding the audit. Balance sheet, income/expense and other items should be considered, in relation to the return or taxpayer, when initially determining what areas will need to be examined.

Continued on next page

Pre-Audit Techniques, Continued

Requests for assistance

There may be times when a TE/GE agent may require the assistance of another function within the Service. The need for assistance may be recognized as early as during the pre-audit analysis. For example, if IDRS research undertaken during the pre-audit analysis indicates that the plan sponsor did not file a tax return.

Agents should request assistance using the Specialist Referral System (SRS). SRS is an automated referral request process where agents enter a request online, which will automatically notify the appropriate Specialist Manager of the request. If accepted by the Specialist Manager, the manager will assign a specialist to the case.

Using the SRS, agents can generate referrals for assistance for a Computer Audit Specialist (CAS), Economist, Employment Tax (LMSB), Employment Tax (SB/SE), Engineering, Excise, Exempt Organizations, Federal, State & Local Government, Financial Products, Indian Tribal Government, International and Tax-Exempt Bonds. The system can be accessed through the IRWeb.

Note: This is not to be confused with Form 5666 referrals.

Materiality

Only material, or significant items should be considered. Items can be material in absolute dollar value, relative dollar value, material when viewed on a multiple year comparison and/or material to the specific industry involved. Judgment and experience should also be used in determining issues of materiality.

Significant includes, but is not limited to:

- The absolute size of the item
- The comparative size of the item
- The relationship to or with other items on the return
- Missing, misleading, and/or incomplete items.

The meaning of “significant” will also depend upon the agent’s view of the separate items that comprise the return and relationship of the item to the return as a whole.

TEQMS Reminders For Pre-Audit

**Purpose of
TEQMS**

The Tax Exempt Quality Measurement System (TEQMS) quality standards are based on the Service's modernization efforts. Balanced measures, which includes quality, is one of the five key modernization "levers of change".

The first TEQMS Employee Plans Examinations quality standard is "Examination Planning". This standard includes the examination planning prior to contacting the taxpayer, and the initial contact with the taxpayer or their representative.

This standard measures whether the pre-audit identified material issues. It also measures whether the initial request for information was clear, concise, appropriate, and addressed the potential issues selected. This standard also measures whether all necessary steps were taken to set the groundwork for a complete examination and to ensure the correct statute of limitations date was determined.

**Element 1A
Prior to
Contacting
Taxpayer**

All relevant internal sources should be queried and evaluated to provide the necessary information as to the background of the taxpayer. The time charged to the pre-planning activities should be commensurate with the complexity of the return and pre-planning issues developed. The statute of limitations must be determined. **A pre-plan workpaper should be used to document these actions and set the initial scope of the audit.**

**Element 1A.1
Information
Sources****Were appropriate internal information sources queried?**

Examiners should consider IDRS, AIMS, RICS, EDS for prior determination letters, and CFOL. The ADP and IDRS Information Handbook should be used to analyze the IDRS, AIMS, and CFOL information. See "Sources of Planning – IDRS" and "Sources of Planning – Form 5500" in this chapter for further analysis of internal information sources available to an agent during the pre-audit.

All other documents with the return should be reviewed including:

- Return Charge Out Documents.
 - Classification Sheets
 - Other sources of information contained in the exam file.
-

Continued on next page

TEQMS Reminders For Pre-Audit, Continued

Element 1A.1
Information
sources
(continued)

Document your analysis and any potential issues developed in your pre-audit plan work paper.

Element 1A.2
Time

Was the time commensurate with complexity of return?

Pre-plan activity should be commensurate with the time charged. Factors to be considered in determining appropriate use of time are:

- Complexity of the issues developed.
- Was research performed or warranted?
- Were internal sources of information queried?
- Documentation in file to support the time charged?

Element 1A.3
Statute of
limitations

Was the correct statute of limitations date determined?

Prior to contacting the taxpayer the correct statute expiration date should be determined and verified by reviewing the applicable IDRS research (EMFOLT), the return if available, and the return charge out document if received. Verification of the statute of limitation should be documented in the pre-audit plan workpaper or the Case Chronology Record (CCR).

Element 1B.
Power of
Attorney

Power of Attorney requirements should be followed. Information requested from the taxpayer via a Form 4564 (IDR) or similar attachment to the initial appointment letter should be concise and understandable. The examiner should determine at the beginning of the audit the availability and condition of all books and records.

Continued on next page

TEQMS Reminders For Pre-Audit, Continued**Element 1B.1
Form 2848****Were Power of Attorney requirements followed?**

The examiner must be willing to talk with anyone who is authorized by the taxpayer and is knowledgeable about the taxpayer's business. If the taxpayer requests representation, the proper authorization (Form 2848) is required. The Form 2848 should be reviewed and perfected. The examiner should ensure the Form 2848 is properly executed since Service personnel are prohibited from disclosing tax information of a confidential nature to any unauthorized person.

The examiner must review and forward the Form 2848 to the appropriate Service Center before the case is closed. The Form 2848 and the CCR should be documented when the power of attorney form is secured and processed to the Service Center's CAF function.

**Element 1B.2
Pre-planned
issues shared
with the
taxpayer****Were pre-planned issues shared?**

When initial contact is made with the taxpayer, the examiner will inform the taxpayer which returns are being examined and the tax period(s) involved. The examiner should generally discuss the issues that were selected in the pre-audit plan. The IDR/attachment to the initial appointment letter should be tailored to the specific issues identified in the pre-audit plan. The taxpayer should be informed that additional issues may be examined depending upon the information obtained during the examination. If additional issues are identified the taxpayer or their representative should be notified to avoid any unnecessary delays in the examination process.

Continued on next page

TEQMS Reminders For Pre-Audit, Continued

**Element 1B.3
Information
document
request (IDR)****Was the initial Information Document Request (IDR)/attachment to the appointment letter clear, concise, and appropriate?**

During the initial contact the examiner will request information and documents from the taxpayer needed to perform the examination of the return. The examiner will prepare an IDR or a list of documents to be mailed to the taxpayer with the initial contact letter. The IDR may be discussed with the taxpayer during the initial telephone call. The IDR should:

- Request documents needed to support the issues determined during the pre-audit plan and the initial telephone contact with the taxpayer.
- Request specific records, information, and documents the taxpayer should have available at the initial appointment.
- Include the reason for the requested records and specific time period involved.
- Be phrased in terms understandable to the taxpayer and specific to the taxpayer's plan.
- Always include a response date or indicate the date of the initial or next appointment.

**Element 1B.4
Availability of
books and
records****Was the availability of books and records determined?**

When the initial contact is made by telephone the examiner will ask the taxpayer about the type and availability of records that are maintained by the taxpayer. This is so an accurate and complete IDR/attachment to the initial appointment letter can be prepared. If initial contact is made by a letter the examiner should try to contact the taxpayer by telephone prior to the audit date to discuss the availability of books and records. The examiner should ask the taxpayer about any computer records so that a determination can be made if a computer audit specialist would be needed.

Contacting the Taxpayer

Introduction

During the pre-audit review, the agent should notify the taxpayer of the examination. Internal Revenue Manual (IRM) section 4.71.1.5 provides procedures on the initial contact of taxpayers during the examination. Taxpayers may be contacted by telephone (with written confirmation) or in writing to schedule the initial audit appointment.

Prior to sending Letter 1346, you may contact the employer or valid power of attorney by telephone to inform them of the upcoming audit.

Notifying the taxpayer – Letter 1346

Employers often inquire as to the reason why they are being audited. Provide the employer with information regarding audit selection, such as project codes, sample selection within a population being studied, etc. Find out as much information as possible when speaking to the employer or representative.

For example, it may help in the audit pre-plan if the agent knows if the plan is an adoption of a prototype rather than an individually designed plan that has never received an IRS determination letter. Or, during the telephone conversation, the employer may disclose the fact that another company owns the company sponsoring the plan.

Document information obtained during the pre-audit telephone conversation for use during the examination of the plan.

Notify the taxpayer of the examination by using Letter 1346 (DO), *Examination Confirmation Letter and Examination Requirements*. Letter 1346 should include the date, time and location of the examination.

Every attempt should be made to schedule the appointment at a mutually convenient time and place. We do have the authority, however, to conduct the examination at the place where the taxpayer's books and records are maintained. If this is not possible, agents should request a visit to the business premises as it may reveal information that is relevant to substantiate operational compliance.

Continued on next page

Contacting the Taxpayer, Continued

**Notifying the
Taxpayer -
Letter 1346
(Continued)**

Once an appointment is scheduled, it should be kept unless there are extenuating circumstances.

Provide a list of the documents and records that must be available during the exam. Providing the taxpayer with a list of required information prior to the visit avoids the necessity of a subsequent visit, delays in processing the case, and inconvenience to the plan administrator. Avoid requesting unnecessary information that may cause an expense for the plan sponsor and does not add to the quality of the exam. Documents should not be requested unless there is a direct need for information relating to the audit plan.

**EP CE&O
initial contact
letter and
IDRs**

EP Customer, Education, and Outreach (EP CE&O) conducted a pilot project regarding the initial contact of taxpayers during the examination process. EP CE&O has prepared an initial contact letter, which notifies the taxpayer that their plan has been selected for examination, and provides the Publication 1 and Form 2848. This letter has not yet been approved.

The idea is to contact the taxpayer first and explain the EP examination process before they receive an IDR. The initial contact letter requests the taxpayer call the EP Agent within 10 days to schedule the examination.

IDRs or similar attachments to the initial appointment letter were developed to be used with the 1346 Letter. Tailored attachments to the initial appointment letter have been prepared for the various types of plans such as IRC 401(k), profit sharing, ESOPs, etc.

An example of the draft initial contact letter with the various IDRs for different types of plans (see Exhibit 2) is located at the end of this chapter.

Also attached as Exhibit 3 is a draft of information related to EP exams that will be mailed with the initial appointment letter. These two exhibits have not been officially approved at the present time. The letter attached in Exhibit 2 and the attachment in Exhibit 3 should not be used until such time.

The IDRs should be written in plain language and modified depending on the type of plan(s) that are being examined.

Continued on next page

Contacting the Taxpayer, Continued

Publication 1

Publication 1, *Your Rights As a Taxpayer*, explains the taxpayer's rights during the examination. If Publication 1 is not mailed in advance, it must be provided at the initial meeting to satisfy the prior notification requirement.

The publication fulfills the requirement in IRC 7521(b)(1)(A) that a taxpayer be informed of the examination process, how their return was selected for examination, and their rights under such process at or before the initial interview. This was required under the Restructuring and Reform Act of 1998 (RRA) section 3503.

**Employee
Contact &
RRA 3703**

RRA section 3703 defines what contact information agents must provide and requires Service employees working tax related inquiries to provide taxpayers with the means to identify the appropriate employee who can address any further questions. All Service employees will provide the following information:

- During a telephone or personal contact provide title, last name, and identification card number.
 - On all correspondence a telephone number (local, toll free, or both) where the taxpayer's questions can be answered.
-

**When Letter
1346 is
returned**

Prior to sending Letter 1346, you may contact the employer or valid power of attorney by telephone to inform them of the upcoming audit.

IRM section 4.71.1.5 provides procedures if the initial contact letter is returned to the Service by the post office as undeliverable:

- Check the TE/GE EDS Determination System (EDS).
 - Check telephone and city directories for names and addresses of taxpayer, officers, directors, and plan officials.
 - Use IDRS Form 6882 or For 5644 to request INOLES or ENMOD. This will provide the current entity and address information.
-

Continued on next page

Contacting the Taxpayer, Continued

**If Letter 1346 is
returned**
(continued)

If the current address is not found using the sources listed above as a last resort the postmaster maybe contacted. The following certification statement is required by the postmaster and must be stamp or typed at the bottom of the request. **“Change of address is required for official use. We have searched other known sources of information for the address.”**

Contacting the Taxpayer – POA Procedures

Power of Attorney procedures

Internal Revenue Manual section 4.71.1.7 provides procedures on processing Form 2848, *Power of Attorney and Declaration of Representative* (POA), and the Form 8821, *Tax Information Authorizations* (TIA). The instructions to the Form 2848 and Form 8821, Publication 947 “Practice Before the IRS and Power of Attorney”, and Circular 230 provide additional guidance regarding the use of power of attorney authorizations.

Certified public accountants, attorneys, enrolled agents and enrolled actuaries, usually represent a taxpayer as a power of attorney in an Employee Plans examination.

Unenrolled Return Preparers

Unenrolled return preparers may represent a plan sponsor or trustee during the audit of a Form 5500. “Unenrolled Return Preparers Representation During an Employee Plans Examination” is explained in the April 22, 2002, Internal Revenue Memorandum issued by Gail Moore, Manager, EP Special Review. The unenrolled return preparer is subject to the limitations of Statement of Procedural Rules, Publication 470 (Revenue Procedure 81-38), Publication 947, and Circular 230. Under these documents in the context of an EP Examination, an unenrolled return preparer may represent the taxpayer:

- Only concerning issues for the period covered by the return that they prepared.
- The agent can deal with the unenrolled preparer to gather information and facts.
- It is acceptable to discuss items orally and in writing with the unenrolled preparer.

When it becomes apparent an issue is affecting the tax liability of another entity (i.e. the return of which was not prepared by the unenrolled preparer) beyond just gathering facts and asking questions, then the unenrolled preparer cannot represent that taxpayer.

Continued on next page

Contacting the Taxpayer – POA Procedures, Continued

**Unenrolled
Return
Preparers
(continued)**

The publications and rules specifically indicate that unenrolled return preparers **cannot** perform the following:

- Sign claims for refunds.
- Receive refund checks.
- Sign consents to extend statute of limitations.
- Sign closing agreements.
- Sign waivers of restrictions on assessment or collection of a tax deficiency.

**Form 2848 and
Form 8821
content**

The Form 2848 and Form 8821 should contain the following information:

- Plan or trust name, taxpayer identification number, plan number, and address of the taxpayer or plan.
- Name and address of the designated representative (POA) or appointee (TIA).
- Type of tax (income, UBI, excise, employment, etc.) and tax form number.
- Year(s) or period(s)
- Taxpayer's signature and date of signature.
- If the POA is granted to an attorney, CPA, enrolled agent, or enrolled actuary, a declaration of good standing before the IRS must be signed by the representative.

After verifying it for accuracy, the agent should forward the completed Form 2848 or Form 8821 secured during the Form 5500 examination to the appropriate Accounts Management Center (Service Center) before closing the case. The following considerations should be made:

- The agent should annotate the POA/TIA form with their initials, group number, telephone number, and office code.

Continued on next page

Contacting the Taxpayer – POA Procedures, Continued

**Processing
Form 2848 or
Form 8821**

Completed Forms 2848 and 8821 can be faxed or mailed to the appropriate Accounts Management Center as identified on page 1 of the instructions to the Form 2848. The three Centers are: Memphis, Ogden and Philadelphia. Northeast, Mid-Atlantic, Great Lakes (except for Wisconsin), and Gulf Coast (except for Texas and Oklahoma) EP Areas forward completed 2848 Forms to the Memphis. (fax number: 901-546-4115). Central Mountain and Pacific EP Areas as well as Wisconsin, Texas and Oklahoma forward completed Forms 2848 to Ogden (fax number: 801-620-4249).

The case chronology record should be annotated to indicate that POA/TIA form was forwarded to the appropriate Accounts Management Center.

Form 2848 or 8821 should be kept in the case file, attached to the back of the first page of the return, with a notation “faxed to CAF unit” and the date it was faxed.

Original POA or TIA forms, photocopies, or facsimile transmissions (FAX) are acceptable for processing.

Continued on next page

Effective Interviewing Techniques

Introduction

Once you have completed your pre-contact analysis and are at the audit site, a properly planned and executed interview will add to the quality of the examination process. The primary purpose of an interview is to gather information. A well-planned interview may provide information that can only be obtained through the interview. To conduct an effective interview, it is important that you:

- Know what you want to accomplish through the interview process,
- Develop an interview strategy, and
- Implement the strategy through the development of interview questions.

After you have conducted an interview, you should be able to identify potential problem areas and make informed judgments about the scope and depth of the examination. From the leads, information and evidence obtained, you may find that some issues may be resolved or that it may be necessary to modify your audit plan.

Agent Authority

Agents have the authority to:

- Examine any books, records, papers or other relevant data,
- Summons anyone pertinent to the above purposes, and
- Take testimony of person(s) concerned.

You must use your authority to examine, summons and take testimony fairly and wisely and only when directly related to the following purposes:

- Determining the correctness of any return.
- Preparing a return where none has been prepared.
- Determining the liability of any person for tax.
- Collecting a tax liability.

You exercise this authority as soon as you identify yourself and show your credentials.

Continued on next page

Effective Interviewing Techniques, Continued

**Agent
Authority
(continued)**

In most cases, your initial interview will be conducted with the plan sponsor or the designated POA. The primary purpose of an interview is to obtain factual information as it relates to the plan under audit and the sponsoring employer. If you do not conduct an interview, your workpapers should contain an explanation as to why an interview was not conducted.

In order to obtain information regarding your audit, you should go to the sponsoring employer or a knowledgeable POA. You should not accept couriers. A courier is an individual who shields knowledgeable people from the examining agent by delivering the agent's questions and retrieving responses to the agent's questions. If a representative, acting as a courier, is unduly delaying the examination, you should consider invoking bypass provisions. These provisions allow the agent to notify the taxpayer directly of his representative's behavior.

If the taxpayer fails to correct the situation, your next step would be to issue an administrative summons per IRM 25.5 to the taxpayer. It is important that such summons be enforceable by the Office of the United States Attorney prior to its issuance.

Absent an administrative summons, the Internal Revenue Service cannot compel the taxpayer to submit to an interview. In most cases, however, you will be successful in interviewing the plan sponsor or POA without the issuance and enforcement of a summons.

**Planning for
the interview****Planning for the interview involves three basic tasks:**

1. Identify the goal(s) of your interview. Your goal might be as basic as obtaining answers to questions raised during your review of the Form 5500 series return or more specific such as the gathering of information as it relates to a prohibited transaction or qualification issue.
 2. Review all available information associated with achieving your goal(s). For an initial interview, your pre-audit analysis (review of the return, administrative records, IDRS, EDS, etc.) will provide you with questions. For interviews associated with the development of specific issues, make sure you understand the issue prior to conducting the interview. Furthermore, if for example, the issue involves a specific contract, become familiar with the contract prior to the interview.
-

Continued on next page

Effective Interviewing Techniques, Continued

Planning for the interview
(continued)

3. Determine how you are going to document the interview. As discussed below, this can be accomplished through informal notes, memorandum, affidavits, question and answer, or a combination thereof.
-

Interview outline

In preparing and organizing for your interview, you may choose to prepare an interview outline. An outline can serve as a:

- Guide that contains all the important points that you want to cover.
 - Method to conduct the interview. The outline can help you to identify the goal(s) of the interview, determine what information you want to obtain, and arrange the topics in a logical sequence.
-

When to interview

Typically, you should conduct your interview early in the examination process. This could be in the initial telephone conversations with the taxpayer or POA, or during the initial examination appointment.

Three factors which you should consider in deciding when to best conduct an interview are:

1. Purpose of the interview,
2. Individual to be interviewed, and
3. Type of information solicited.

The purpose of the interview will determine the timing of the interview. If you are seeking general information, interview early in the examination process. If you are seeking specific information, interview while examining the specific issue. If you are presenting an issue, interview only after you have gathered all of the facts and conducted all of the appropriate research.

Continued on next page

Effective Interviewing Techniques, Continued

When to interview
(continued)

If you determine that a closing interview is warranted, or if such an interview is requested by the taxpayer/POA, conduct the interview after you have:

- Determined all of the facts,
- Conducted all of the research,
- Presented all of the issues to the taxpayer,
- Considered all of the taxpayer's concerns, and
- Developed a plan to resolve any issues with which the taxpayer has expressed disagreement.

Timing of the interview should also take into consideration both your schedule and that of the person(s) being interviewed.

Who To Interview

You may interview anyone who has information that is important to your examination. In most cases, you will interview either the plan sponsor or POA. You may also find it necessary on occasion to interview members of the Board of Trustees, accountant to the plan, or the return preparer. There may also be limited situations where you contact third parties and plan participants. Contact of individuals other than the POA or plan sponsor should be coordinated with and approved by your group manager.

Where To Interview

With the exception of an administrative summons enforcement where the location of the interview is specified, you have latitude in determining the location of an interview. Factors you should consider in selecting an interview site are:

- Location conducive to conversation,
 - Accessibility to documents,
 - Comfort and safety of person being interviewed and agent doing the interviewing,
 - Privacy for disclosure purposes,
 - Mobility of the interviewee and agent, and
 - Job site accessibility.
-

Continued on next page

Effective Interviewing Techniques, Continued

Where To Interview (continued)	In determining the location of the interview, you should select a location that is conducive to retrieving and analyzing documents, obtaining specific information, and observing activities.
Explanation of Pub. 1	The initial interview should include an explanation of the examination process and appeal rights as set forth in Publication 1, <i>Your Rights as a Taxpayer</i> . The Case Chronology should be noted that Publication 1 has been provided to the taxpayer.
Suspension of the interview	<p>The interview should be conducted with a person having sufficient knowledge concerning the plan's financial status and operations. IRC section 7521(b)(2) requires an agent to suspend an interview if the taxpayer states that he/she wishes to consult with a representative or otherwise seek advice.</p> <p>The taxpayer's right of consultation will be strictly observed by all agents throughout the examination process. The interview should be suspended and rescheduled accordingly. This provision does not apply to an interview initiated by an administrative summons, and will not be used to repeatedly delay or hinder the examination process. Publication 1 advises taxpayers of this right.</p>
Documenting the interview	<p>Workpapers should document who was interviewed and the extent of the issues discussed. Interviews should be documented in sufficient depth to give a clear understanding to the taxpayer and plan operation.</p> <p>An interview may range from informal conversation to a formal question and answer session given under oath. The case file should reflect a properly planned and executed interview.</p>

Continued on next page

Effective Interviewing Techniques, Continued

Documenting the interview

Depending upon the degree of structured formality, an interview may be documented in the following ways:

- Informal notes,
 - Question and answer,
 - Memorandum of interview, or
 - Affidavit.
-

Informal notes

In most cases, you will take informal notes to document interviews. Your documentation may be in the form of an outline, or more detailed notes taken during or immediately after an interview/conversation. Regardless of what format you choose to use, your notes should be prepared timely and contain sufficient detail on what transpired during the interview. Any format is suitable. Your notes should, however, contain the following:

- Date and time of interview,
 - Place of interview,
 - Persons present at interview, and
 - What occurred at interview?
-

Interview questions

The questions asked during the initial interview provide a guide for effective use of your time. Your questions should provide you with an understanding of the taxpayer's financial history, business operations and accounting records. To decrease taxpayer burden, you should only request the relevant and necessary information to resolve issues under consideration.

Following is a list of sample of initial interview questions:

1. What is the employer's type of business?
 2. Are there any related businesses? Knowledge of the business operation could affect coverage, benefits, and prohibited discrimination.
-

Continued on next page

Effective Interviewing Techniques, Continued

**Interview
questions
(continued)**

3. How long has the employer been in this business? This information will help determine years of service.
4. How is the plan administered? This includes:
 - What systems or procedures are in place to gather demographic data?
 - Who is the person that is the most familiar with the plan's operations?
 - What outside professionals, if any, are involved in the plan's administrations, and what do they do?
 - Who maintains the plan's documents?
 - How are employees informed of the plan and/or changes to the plan?
 - Who determines when an employee is eligible to participate in the plan, and how is the employee notified that he/she is eligible?
 - Who determines benefits upon retirement or separation from service?
 - Who manages plan investments?
5. Are there any amendments to the plan since the determination letter was received from IRS? Modify the audit plan to deal with the issues identified from the amendments.
6. Has the return under examination been amended? If yes, secure a copy of the amended return, reconcile it with the original return, and identify any additional audit issues.
7. Who maintains the plan records? If the employer maintains the records, a more thorough exam may be warranted. This exam should include a detailed analysis of internal controls and test checks.
8. What types of records does the trust maintain? By asking this question, the examiner may avoid duplication of schedules that have already been prepared, expedite the audit, and improve the effective use of time. Also, ask what format (Paper vs. Computer/CD's) do third party administrators provide the reports to plan sponsors, and the frequency of the reports (Annual, Quarterly, Monthly). You may be able to secure reports before the initial examination appointment to review and help plan the exam.

Continued on next page

Effective Interviewing Techniques, Continued

Interview questions
(continued)

9. Is the employer part of a controlled or affiliated service group? The response to this question impacts the analysis of coverage. Ask for the names of all members of the controlled group and the acquisition date of all entities owned by the employer when a controlled or affiliated service group exists.
10. What are the names of all owners and the percentage of ownership of the employer? The examiner needs this information for top heavy requirements, IRC section 415 limits, IRC section 410, IRC section 401(a)(26), actual deferral percentage (ADP), actual contribution percentage (ACP), and prohibited transaction issues.
11. Does the employer maintain other retirement plans? If there are other plans, determine to what extent they should be examined. At a minimum, verify that the annual returns have been filed for other plans and inspect them for potential issues.
12. Did any plans have key employees within the five years period prior to the Top Heavy Determination Date? The answer to this question may affect the top-heavy requirements.
13. Are there any related examinations? A transcript shows if any examinations of a related Form 1120 return or other EP returns, such as Form 5330, *Return of Initial Excise Taxes Related to Employee Benefit Plans*, or Form 990-T, *Exempt Organization Business Income Tax Return*, are under examination by another examiner. The examiner must also obtain the results of any examinations conducted by Department of Labor /Pension Welfare Benefit Administration (DOL).
14. Did any fiduciary, servicing person, 50 percent owner, or officer engage with the plan in any acts of self-dealing? You need to explain the various acts, such as loans, sales, transfers, leases, and furnishing of goods.

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Effective Interviewing Techniques, Continued

Questioning techniques

Ask the proper types of questions initially, recognize areas to develop, and formulate proper follow-up questions. The types of questions asked are dependent upon the goal of the interview, the person being interviewed, and the background information available before the interview takes place, and the information obtained during the interview itself.

Phrase questions so the person being interviewed can completely explain the following areas:

- Who? Identify all persons referred, including name, address, doing business as, business associates, background, and occupation.
- What? Discover the overall description of the event, activity or transaction. Relate questions in this area to relationships, general methods, and systems.
- Where? Obtain complete details regarding the location of books, records, documents, and reports.
- When? Establish a chronology of the event, activity or transaction. Determine a specific time or date through direct questioning. Support the interviewee's chronology through documentation that demonstrates the start, important events during, and the conclusion or termination of the event, transaction, or activity.
- Why? Questions regarding why a transaction or activity took place, or why an event occurred the way it did normally involves a discussion of motives or acts.
- How? Gather complete details regarding the activity. Relate questions in this area to the study of the activity from the first step to the last step.

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Effective Interviewing Techniques, Continued

Questioning techniques, (continued)

Follow through on any answer that is not complete and to the point with questions that will extract all knowledge that the interviewee possesses of the topic under discussion. If a question is important enough to be asked, then it is important enough to require an answer. Continue asking questions until you are certain that you have all of the information you can reasonably expect to obtain. Obtaining complete and accurate information may be expedited if the questions properly explore and develop a topic.

The following suggestions will help you:

- Use short questions organized by topic that can be clearly and easily understood.
- Ask questions that require narrative answers; avoid yes or no answers whenever possible.
- Avoid questions that suggest part of the answer.
- Question individual about facts that were learned. Require the individual to give a factual basis for any conclusions stated.
- Be alert to keep the individual from wandering. When possible, require a direct response.
- Prevent the individual from leading you off of the topic. Do not allow the individual to confuse the issue and leave basic questions unanswered.
- Concentrate more on the answers being given by the individual than on the next question.
- To avoid an unrelated and incomplete chronology, clearly understand each answer and ensure that any lack of clarity is eliminated before continuing.
- When all important points have been resolved, end the interview but leave the door open for further meetings with the individual.

Continued on next page

Effective Interviewing Techniques, Continued

Questioning Techniques, (continued)

Evasive, ambiguous or incomplete responses are obstacles that may be encountered during questioning. Such inadequate responses may result from a misunderstanding of your questions or may be used by the taxpayer as a means to not fully answer your questions. To reduce the possibility of this obstacle:

- Phrase your questions simply and directly
- Clarify ambiguous answers by asking additional questions, but do not allow the answers to the additional questions to confuse the original issue and leave the basic question unanswered.
- Use exact and precise questions requiring a direct reply and, if the taxpayer responds with evasive replies (pay attention to words, such as: because, perhaps, sometimes, maybe), immediately question such answers until you have obtained a complete, satisfactory answer.
- Be constantly alert to all answers and consider each reply before proceeding to the next question.
- Incomplete answers can be curtailed by exploring plausible possibilities and questioning the taxpayer about related events that frequently occur in similar cases.
- During an interview be alert to the possibility of misrepresentation by the interviewee.
- During an interview be alert to the possibility of misrepresentation by the interviewee.
- You should explore the reasons for any inconsistencies in the answers.
- If the answer is unresponsive or inadequate, repeat the question or rephrase it.

Continued on next page

Effective Interviewing Techniques, Continued

Questioning techniques (continued)

- Avoid compound questions. They tend to be difficult to answer and often lead to ambiguity. The following illustrates how a compound question can be rephrased and reduced to several simple, direct questions.
-

Document records from the interview

In most examinations, documentary evidence is critical. As a general rule obtain as many pertinent records or arrange to obtain them at the initial interview.

- Question the taxpayer thoroughly regarding the books and records. Understanding the organization's record keeping system is a prerequisite to requesting desired documents.
 - Request records in a straightforward manner.
 - Have the individual thoroughly explain any unclear records.
 - Document any records received.
 - If the requested records are not available at the interview, make preparations to secure them.
 - Copy records as soon as possible or request a copy in advance of the interview.
-

Evaluate information secured from the interview

Once you have recorded the answers to your interview questions, you need to evaluate the information in order to determine if additional interviews are necessary or if a particular issue or question can be resolved. The steps used to evaluate the information are as follows:

- Make sure you have all available information.
 - Make sure all of the information that you have is accurate. (If the information is inaccurate this may be of significance.)
-

Continued on next page

Effective Interviewing Techniques, Continued

Verbatim recordings

Requests by taxpayers or their representative to make tape, stenographic, or other verbatim recordings of the examination proceedings will ordinarily be allowed, except where the taxpayer's or representative's behavior is clearly disruptive of the normal examination process. Requests to videotape or otherwise film examination proceedings will not be granted.

- Group Managers approval must be secured prior to the recording.
- Taxpayer or representative furnish their own recording equipment.
- The Service can produce its own recording.
- The recording takes place in a suitable location (ordinarily in IRS Office).

If granted, the manager will arrange an appropriate time and suitable location in an IRS office where equipment is available to make the Service's recording. See IRM 4.71.1.11 for specific verbatim recording procedures.

EXHIBIT 1 – IDRS/CFOL COMMANDS

IDRS/CFOL COMMANDS AND INPUT FORMATS

KEY		X – SSN OR EIN		N - NAME		YYYY - YEAR		MM - MONTH	
ec – ENTRY CODE		PPP - PLAN #	RRR - REPORT NO			nnnn - GEN #		ST - STATE	
DF – DEFINER	MF – MFT	C - one of the return status codes							
COMMAND	INPUT FORMAT					DESCRIPTION			
AMDIS	AMDIS XX-XXXXXXXec					Summary of all MFTs & tax periods on AIMS			
AMDISA	AMDISAXX-XXXXXXX					Display specific MFT & tax period			
With DF	MF YYYYYMMec								
BMFOLI	BMFOLIXX-XXXXXXXec					Summary screen of all MFTs & tax periods			
BMFOLE	BMFOLEXX-XXXXXXXec					Entity data on Business Master File (BMF)			
BMFOLT	BMFOLTXX-XXXXXXX MFYYYYMMec					Tax Module Info., DLN, transaction codes, etc.			
BMFOLA	BMFOLAXX-XXXXXXX MFYYYYMMec					Displays adjustment transaction codes			
BMFOLR	BMFOLRXX-XXXXXXX MFYYYYMMec					Posted return data for particular period & MFT			
BMFOLT	BMFOLTXXX-XX-XXXXV 76YYYYMMPPec					Posted Form 5330 return with plan no & SSN			
BMFOLT	BMFOLTXX-XXXXXXX 76YYYYMMpppec					Posted Form 5330 return with plan no (PPP) and EIN			
BMFOLO	BMFOLOXX-XXXXXXXec					Exempt Org. Information			
BRTVU	BRTVU XX-XXXXXXX MFYYYYMMec					Summary Info. of BMF return			
BRTVU with definer code	BRTVU XX-XXXXXXX MFYYYYMM DFec					Views schedules & line items of BMF returns			
EINAD	EINAD NNNNNNNNNNNN,+,ZIPec					Locate EIN			
EMFOLI	EMFOLIXX-XXXXXXXec					Summary of all plan nos., names, & tax periods			
EMFOLE	EMFOLEXX-XXXXXXXec					Filer/sponsor name, address, & other EPMF entity information			
EMFOLT	EMFOLTXX-XXXXXXX PPPYYYYMMec					Tax Module Info., DLN, transaction codes, etc.			
EMFOLD	EMFOLDXX-XXXXXXX PPec					Plan administrator data			

EMFOLL	EMFOLLXX-XXXXXXX PP	Plan Module data
ENMOD	ENMOD XX-XXXXXXX (EIN) ENMOD XXX-XX-XXXX (SSN)	Provides name, address and other entity info.
ERTVU	ERTVU XX-XXXXXXX PPPYYYYMMec	View summary info. of Pre EFAST return filed
ERTVU	ERTVU XX-XXXXXXXC PPPYYYYMMec	View summary info. of EFAST return filed
ERTVU with definer code	ERTVU XX-XXXXXXX PPPYYYYMM DFec	Views schedules & line items of EP return
IMFOLI	IMFOLIXXX-XX-XXXXec	Listing of tax periods for individual returns
IMFOLE	IMFOLEXXX-XX-XXXXec	Entity data on individual returns
IMFOLR	IMFOLRXXX-XX-XXXX MFYYYYMMec	Return info. for stated period
IMFOLT	IMFOLTXXX-XX-XXXX MFYYYYMMec	Tax Module Info., DLN, transaction codes, etc.
IMFOLA	IMFOLAXXX-XX-XXXX MFYYYYMMec	Tax adjustments for stated period
INOLES	INOLESXXX-XX-XXXXec INOLESXX-XXXXXXXec	Name line, address, filing req., SSA info. & other entity entity information
INOLET	INOLETXX-XXXXXXXec	Displays both BMF & EPMF under the same EIN
INOLEG	INOLEGXXXXXXXXXXec	Use when TIN type is unknown
INOLEP	INOLEPXX-XXXXXXXec	Displays plan info. from EPMF
INOLEX	INOLEXXX-XXXXXXXec	Locates any known cross reference TIN's
IRPTR	IRPTREXXXXXXXXXX3YYYYec 3 = TIN Type	Generates IRP Payee transcript
IRPTR	IRPTRRXXXXXXXXXX4YYYYWWEec 4=All TIN Types WW=Wage Documents EP=Function Code In remarks key in DOCREQ & other identifying info.	Generates IRP Payer transcript
MESSG	MESSGec	Displays IDRS messages eg. Updates on command codes

NAMEE	NAMEEec	Locates EIN
NAMES	NAMESec	Locates SSN
PMFOL	PMFOLS3XXXXXXXXXXYYYec 1=SSN 2=BMF 3=EPMF D after PMFOL = Detailed Screen	Summary of number of information & wage returns filed by type
RTVUE	RTVUE XXX-XX-XXXX MFYYYYMMec	Summary Info. of individual return
RTVUE	RTVUE XXX-XX-XXXX MFYYYYMM DFec	Views schedules & line items of Form 1040 return
SSNAD	SSNAD NNNNNN,NNNN,ZIPec	Locates SSN
SUMRY	SUMRY XX-XXXXXXXec	Summary of tax periods on IDRS (use with EIN or SSN) or SSN
TXMOD	TXMODPXX-XXXXXXXP MF PPP YYYYYMMec	Displays tax modules info. for a specific EP return Form 5500 MFT 74
TXMOD	TXMODPXX-XXXXXXX MF YYYYYMMec	Displays tax modules info. For a specific BMF Return
TXMOD	TXMODPXX-XXXXXXX 76 PPP YYYYYMMec	Displays tax modules info. For a specific 5330 return PLAN NO. NEEDED
TXMOD	TXMODPXXX-XX-XXXXV 76 PPP YYYYYMMec	Displays tax modules info. For a specific 5330 return PLAN NO. NEEDED SSN always needs a V

Exhibit 2- Draft EP CE&O Initial Contact Letter

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

Date:

XYZ Corporation
Attn:

Person to Contact:**Telephone Number:****Year (s):**

December 31, 1999

Plan Number:

001

Plan Name:

Pension Plan and Trust

EIN:

00-1234567

Dear Sir or Madam:

The employee plans division of the Internal Revenue Service is committed to providing plan sponsors with top-quality service. Part of our job is to help plan sponsors understand and comply with the requirements for tax-qualified plans. Another part of our job is to protect the public interest by applying the tax law with integrity and fairness. One of the ways we do this is by auditing plans.

Continued on next page

Draft Contacting the TaxpayerEP CE&O Initial Contact Letter, Continued

Your plan is being audited. Plans are selected for audit for a variety of reasons, so the selection of a plan for audit does not mean that there is any problem with the plan.

Please contact me within ten (10) days to discuss the information that will be necessary for the audit, and to schedule a convenient appointment.

If there is someone else in your organization who is responsible for the operation of the plan, or if you have an outside advisor (attorney, accountant, consultant, etc.) assisting you with the plan, you may wish to forward this letter and ask that person to contact me.
Exhibit 1 (Continued)- EP C, E, O Initial Contact Letter

Enclosed is Publication 1, *Your Rights as a Taxpayer*. Please review it. If you have questions about it, we can discuss them when you call.

If you want an outside advisor to represent you in the audit, please complete the enclosed Form 2848, *Power of Attorney*, or have your representative complete it for your signature, and return it to me.

Sincerely,

John Goody
EP Specialist

Encl: Publication 1
Form 2848

Exhibit 2- Draft IDR for Defined Contribution Plan Examination**Information and Document Request**

(for Defined Contribution Plan)

Each of the listed items has a purpose in the audit process, so all are important. If any requested information or document presents a problem for you, or is available in electronic or other form, please contact me to let me know and discuss possible alternatives.

Each request relates to the year(s) under audit unless otherwise specified.

Please have each of these items available for review during the audit. It is not necessary for you to make copies of everything. If I need copies of items for my file, I will let you know.

The initial review will be more efficient for both of us if the requested information and documents are complete and well organized. For example, it will be helpful if the information and documents are numbered to correspond to the numbered items below.

Please feel free to contact me about any questions that arise when you are getting the information and documents together.

[Option: Also, I have circled several items. I would appreciate it if you would send these to me, by mail, so that I can review them in advance.]

Exhibit 2 (Continued)- Draft IDR for Defined Contribution Plan Examination

[Note to auditor: This list should be modified to include only the items necessary for your audit, and to eliminate unnecessary items.]

Authorization of Representative

If you would like someone else to represent you in this audit, and you have not already done so, please complete the enclosed Form 2848, Power of Attorney, and return it to me, and forward a copy of this request to your representative, as soon as possible.

Profit Sharing

Please have the following items available during the examination:

A. To document plan provisions and ensure that the plan is qualified in form and to verify filings.

1. The plan document, the trust, and all amendments that relate to the year under examination.
2. The most recent IRS determination letter that applies to the year(s) under examination and any special demonstrations submitted with your determination letter applications.
3. If you are using a prototype plan, a copy of the IRS opinion letter issued to the sponsor of the prototype plan, the plan document, and adoption agreement.
4. Form 5500 or 5500-C, Annual Return/Report of Employee Benefit Plan, for each year under examination, the preceding year and succeeding year. Please be sure to include all schedules filed, such as Schedules A, B, and SSA, if applicable.
5. Forms 5500 or 5500-C, Annual Return/Report of Employee Benefit Plan, for any other qualified retirement plans the employer sponsored during each year under examination.
6. The summary plan description (SPD), summaries of all material modifications (SMM), and summary annual reports (SAR).
7. Other:

B. To determine if the plan satisfies the Eligibility and Coverage requirements of Internal Revenue Code (IRC) section 410, please provide the following:

1. The employer's payroll records that were used to decide employees' eligibility to take part in the plan for the year(s) under examination, such as time cards, personnel records, and employment contracts. Also include a copy of the Forms 940, Employer's Annual Federal Unemployment Tax Return; 941: Employer's Quarterly Federal Tax Return; W-2s: Wage and Tax Statement and related W-3. **These records must show the dates of hire, dates of participation and hours worked during the eligibility computation period.**

2. Participant allocation schedules, employee census reports and or valuation reports.
3. A list of all plan participants for the plan year(s) ending _____, as well as a list of all employees who are not participating in the plan and the reason why they are not.
4. A demonstration outlining how the plan satisfied the minimum coverage requirements of IRC 410(b).
5. Other:

C. To determine if the plan satisfies the Vesting and Distribution requirements of IRC sections 401(a)(9), 401(a)(11), 401(a)(31), 411 and 417.

1. Please provide a list of the plan participants who were active participants (received an allocation) in the prior year but were not active in the year under examination.
2. The Form 5500, line _____, indicates that \$_____ was paid to plan participants:
 - a) Please provide a list of these participants,
 - b) Their dates of hire and dates of termination,
 - c) Proof of payment and/or proof of rollover,
 - d) Spousal consent forms to waive the Qualified Joint & Survivor form of benefit if required,
 - e) Any QDRO requests received or QDRO distributions made for the plan year under examination.
3. The trust's or employer's Form 1099R's, Statement for Recipients of Total Distributions from Profit Sharing, Retirement Plans and Individual Retirement Arrangements, for the year(s) under examination.
4. Other:

D. To demonstrate how the plan satisfies the deductible limits of IRC section 404.

1. Form ____1120, ____1120S, ____1040, ____1065 Tax return of the plan sponsor, for the year(s) under examination.

2. Cancelled checks or fund transfers verifying contributions made to the plan and deductions taken on the tax return. Please **reconcile** the deduction taken on the return to the contributions made to the plan.

E. **To demonstrate that the plan is in compliance with the nondiscriminatory requirements, contribution limitation and top heavy requirements of Internal Revenue Code sections 401(a)(4), 415 and 416 respectively.**

1. Please provide an allocation schedule for the year under examination and the prior plan year for this plan and any other defined contribution plan. The schedule should include the participant's compensation, the allocation of the Employer contribution, forfeitures and income.
2. Please provide the top heavy ratio calculation as defined in Internal Revenue Code section 416(g).
3. Provide a list of the Highly Compensated Employees as defined in Internal Revenue Code section 414(q).
4. Please demonstrate how the plan satisfies either a Safe Harbor (Income Tax Regulations 1.401(a)(4)-2(b)) or the General Test (Income Tax Regulations 1.401(a)(4)-2(c)).
5. Other:

F. **The following items are being requested to examine the operation of the trust including determining the ownership, existence and fair market value of trust assets, and whether the provisions of IRC sections 72, 401(a)(2), 513, 514 and 4975 are being complied with.**

1. Evidence of a fidelity bond for all people handling trust assets as required by ERISA section 412(a).
2. Supporting documents for all plan assets and liabilities, such as broker's statements, bank statements, stock certificates, insurance contracts, loan documents, deeds, etc.
3. Trustee's or administrator's reports; ledgers; journals; trustee committee, investment committee minutes; certified audit report, and other financial reports for the trust. Any other financial reports including receipt and disbursement statements, a detailed income statement and a detailed balance sheet.
4. Other

401(k)

Please have the following items available during the examination:

A. To document plan provisions and ensure that the plan is qualified in form and to verify filings.

1. The plan document, the trust, and all amendments that relate to the year under examination.
2. The most recent IRS determination letter that applies to the year(s) under examination and any special demonstrations submitted with your determination letter applications.
3. If you are using a prototype plan, a copy of the IRS opinion letter issued to the sponsor of the prototype plan, the plan document and adoption agreement.
4. Form 5500 or 5500-C, Annual Return/Report of Employee Benefit Plan, for each year under examination, the preceding year and succeeding year. Please be sure to include all schedules filed, such as Schedules A, B, and SSA, if applicable.
5. Forms 5500 or 5500-C, Annual Return/Report of Employee Benefit Plan, for any other qualified retirement plans the employer sponsored during each year under examination.
6. The summary plan description (SPD), summaries of all material modifications (SMM), and summary annual reports (SAR).
7. Other:

B. To determine if the plan satisfies the Eligibility and Coverage requirements of Internal Revenue Code (IRC) section 410, please provide the following:

1. The employer's payroll records that were used to decide employees' eligibility to take part in the plan for the year(s) under examination, such as time cards, personnel records, and employment contracts. Also include a copy of the Forms 940: Employer's Annual Federal Unemployment Tax Return; Form 941: Employer's Quarterly Federal Tax Return, W-2s: Wage and Tax Statement and related W-3. **These records must show the dates of hire, dates of participation and hours worked during the eligibility computation period.**
2. Participant allocation schedules, employee census reports and or valuation reports.
3. A list of all plan participants for the plan year(s) ending_____, as well as a list of all employees who are not participating in the plan and the reason why they are not.
4. A demonstration outlining how the plan satisfied the minimum coverage requirements of IRC 410(b).
5. Other:

C. To determine if the plan satisfies the Vesting and Distribution requirements of IRC sections 401(a)(9), 401(a)(11), 401(a)(31), 411 and 417.

1. Please provide a list of the plan participants who were active participants (received an allocation) in the prior year but were not active in the year under examination.
2. The Form 5500, line _____, indicates that \$_____ was paid to plan participants:
 - a) Please provide a list of these participants,
 - b) Their dates of hire and dates of termination,
 - c) Proof of payment and/or proof of rollover,
 - d) Spousal consent forms to waive the Qualified Joint & Survivor form of benefit if required,
 - e) Any QDRO requests received or QDRO distributions made for the plan year under _____ examination.
3. The trust's or employer's Form 1099R's, Statement for Recipients of Total Distributions from Profit-Sharing, Retirement Plans and Individual Retirement Arrangements, for the year(s) under examination.

4. Other:

D. To demonstrate how the plan satisfies the deductible limits of IRC section 404.

1. Form __1120, __1120S, __1040, __1065 Tax return of the plan sponsor, for the ____ year(s) under examination. .
2. Cancelled checks or fund transfers verifying contributions made to the plan and deductions taken on the tax return. Please **reconcile** the deduction taken on the return to the contributions made to the plan.
3. Other:

E. To demonstrate that the plan is in compliance with the nondiscriminatory requirements, contribution limitation and top heavy requirements of Internal Revenue Code sections 401(a)(4), 415 and 416 respectively.

1. Please provide an allocation schedule for the year under examination and the prior plan year for this plan and any other defined contribution plan. The schedule should include the participant's compensation, the allocation of the Employer contribution, forfeitures and income.
2. Please provide the top heavy ratio calculation as defined in Internal Revenue Code section 416(g).
3. Provide a list of the Highly Compensated Employees as defined in Internal Revenue Code section 414(q).
4. Please demonstrate how the plan satisfies either a Safe Harbor (Income Tax Regulations 1.401(a)(4)-2(b)) or the General Test (Income Tax Regulations 1.401(a)(4)-2(c)).
5. A complete copy of the Average Deferral Percentage (ADP) test. (Code section 401(k)).
6. A complete copy of the Actual Contribution Percentage (ACP) test. (Code section 401(m)).
7. A complete schedule demonstrating whether the plan meets the Multiple Use Test of Income Tax Regulation 1.401(m)-2.

8. For items 5,6 and 7 above, the tests should include all **eligible** employees, whether the plan is using a **current** year or **prior** year testing method, how the figures on the tests correspond to the compensation and deferrals listed on the W-2's and how the compensation is nondiscriminatory per Internal Revenue Code section 414(s).
9. Other:

F. The following items are being requested to examine the operation of the trust including determining the ownership, existence and fair market value of trust assets, and whether the provisions of IRC sections 72, 401(a)(2), 513, 514 and 4975 are being complied with.

1. Evidence of a fidelity bond for all people handling trust assets as required by ERISA section 412(a).
2. Supporting documents for all plan assets and liabilities, such as broker's statements, bank statements, stock certificates, insurance contracts, loan documents, deeds, etc.
3. Trustee's or administrator's reports; ledgers; journals; trustee committee, investment committee minutes; certified audit report, and other financial reports for the trust. Any other financial reports including receipt and disbursement statements, a detailed income statement and a detailed balance sheet.

Money Purchase Pension Plan

Please have the following items available during the examination:

A. To document plan provisions and ensure that the plan is qualified in form and to verify filings.

1. The plan document, the trust, and all amendments that relate to the year under examination.
2. The most recent IRS determination letter that applies to the year(s) under examination and any special demonstrations submitted with your determination letter applications.

3. If you are using a prototype plan, a copy of the IRS opinion letter issued to the sponsor of the prototype plan, the plan document and adoption agreement.
4. Form 5500 or 5500-C, Annual Return/Report of Employee Benefit Plan, for each year under examination, the preceding year and succeeding year. Please be sure to include all schedules filed, such as Schedules, A, B, and SSA, if applicable.
5. Forms 5500 or 5500-C, Annual Return/Report of Employee Benefit Plan, for any other qualified retirement plans the employer sponsored during each year under examination.
6. The summary plan description (SPD), summaries of all material modifications (SMM), and summary annual reports (SAR).
7. Other:

B. To determine if the plan satisfies the Eligibility and Coverage requirements of Internal Revenue Code (IRC) section 410, please provide the following:

1. The employer's payroll records that were used to decide employees' eligibility to take part in the plan for the year(s) under examination, such as time cards, personnel records, and employment contracts. Also include a copy of the Forms 940: Employer's Annual Federal Unemployment Tax Return; 941: Employer's Quarterly Federal Tax Return; W-2s: Wage and Tax Statement and related W-3. **These records must show the dates of hire, dates of participation and hours worked during the eligibility computation period.**
2. Participant allocation schedules, employee census reports and or valuation reports.
3. A list of all plan participants for the plan year(s) ending_____, as well as a list of all employees who are not participating in the plan and the reason why they are not.
4. A demonstration outlining how the plan satisfied the minimum coverage requirements of IRC 410(b).
5. Other:

C. To determine if the plan satisfies the Vesting and Distribution requirements of

IRC sections 401(a)(9), 401(a)(11), 401(a)(31), 411 and 417.

1. Please provide a list of the plan participants who were active participants (received an allocation) in the prior year but were not active in the year under examination.
2. The Form 5500, line _____, indicates that \$_____ was paid to plan participants:
 - a) Please provide a list of these participants,
 - b) Their dates of hire and dates of termination,
 - c) Proof of payment and/or proof of rollover,
 - d) Spousal consent forms to waive the Qualified Joint & Survivor form of benefit if the benefit was not paid in the form of a Qualified Joint and Survivor Annuity.
 - e) Any QDRO requests received or QDRO distributions made for the plan year under examination.
3. The trust's or employer's Form 1099R's, Statement for Recipients of Total Distributions from Profit Sharing, Retirement Plans and Individual Retirement Arrangements, for the year(s) under examination.
4. Other:

D. To demonstrate how the plan satisfies the deductible limits of IRC section 404 and the minimum funding requirements of IRC 412.

1. Form __1120, __1120S, __1040, __1065 tax return of the plan sponsor, for the year(s) under examination.
2. Cancelled checks or fund transfers verifying contributions made to the plan and deductions taken on the tax return. Please **reconcile** the deduction taken on the return to the contributions made to the plan.
3. Other:

E. To demonstrate that the plan is in compliance with the nondiscriminatory requirements, contribution limitation and top heavy requirements of Internal Revenue Code sections 401(a)(4), 415 and 416 respectively.

1. Please provide an allocation schedule for the year under examination and the prior plan year for this plan and any other defined contribution plan. The schedule should include the participant's compensation, the allocation of the Employer contribution, forfeitures and income.
2. Please provide the top heavy ratio calculation as defined in Internal Revenue Code section 416(g).
3. Provide a list of the Highly Compensated Employees as defined in Internal Revenue Code section 414(q).
4. Please demonstrate how the plan satisfies either a Safe Harbor (Income Tax Regulations 1.401(a)(4)-2(b)) or the General Test (Income Tax Regulations (1.401(a)(4)-2(c)).
5. Other:

F. The following items are being requested to examine the operation of the trust including determining the ownership, existence and fair market value of trust assets, and whether the provisions of IRC sections 72, 401(a)(2), 513, 514 and 4975 are being complied with.

1. Evidence of a fidelity bond for all people handling trust assets as required by ERISA section 412(a).
2. Supporting documents for all plan assets and liabilities, such as broker's statements, bank statements, stock certificates, insurance contracts, loan documents, deeds, etc.
3. Trustee's or administrator's reports; ledgers; journals; trustee committee, investment committee minutes; certified audit report, and other financial reports for the trust. Any other financial reports including receipt and disbursement statements, a detailed income statement and a detailed balance sheet.
4. Other

Defined Benefit Plan**Please have the following items available during the examination:**

To document plan provisions, ensure that the plan is qualified in form and verify filings.

1. The plan document, the trust, and all amendments related to year under examination.
2. The most recent IRS determination letter that applies to the year(s) under examination and any special demonstrations submitted with your determination letter applications.
3. If you are using a prototype plan, a copy of the IRS opinion letter issued to the sponsor of the prototype plan, the plan document and adoption agreement.
4. Form 5500 or 5500-C, Annual Return/Report of Employee Benefit Plan, for each year under examination and any succeeding year. Please be sure to include all schedules filed, such as Schedules, A, B, and SSA, if applicable.
5. Forms 5500 or 5500-C, Annual Return/Report of Employee Benefit Plan, for any other deferred pension plans the employer had during each year under examination.
6. The summary plan description (SPD), summaries of all material modifications (SMM), and summary annual reports (SAR).
7. Other

To determine if the plan satisfies the Eligibility and Coverage requirements of Internal Revenue Code (IRC) section 410, please provide the following:

The employer's payroll records that were used to decide employees' eligibility to take part in the plan for the year(s) under examination, such as time cards, personnel records, and employment contracts. Also include a copy of the Forms 940: Employer's Annual Federal Unemployment Tax Return; 941: Employer's Quarterly Federal Tax Return; and W-2s, Wage and Tax Statement and related W-3. **These records must show the dates of hire, dates of participation and hours worked during the eligibility compensation period.**

Participant census reports and /or valuation reports.

A list of all plan participants for the plan year(s) ending _____, as well as a list of all employees who are not in the plan and the reason why they are not in the plan.

A demonstration outlining how the plan satisfied the minimum coverage requirements of IRC 410(b).

Other:

To determine if the plan is in compliance with the vesting, distribution, and limitation on benefits requirements of IRC sections 401(a)(9), 401(a)(11), 401(a)(31), 411, 415 and 417.

1. Please provide a list of the plan participants who were active participants (accrued a benefit) in the prior year but were not active in the year under examination.
2. The 5500, line _____ indicates that \$ _____ was paid to plan participants:
 - a. Please provide a list of these participants,
 - b. Their dates of hire and dates of termination
 - c. Proof of payment and/or proof of rollover,
 - d. Spousal consent forms to waive the Qualified Joint & Survivor form of benefit if the Benefit was not paid in the form of a Qualified Joint & Survivor Annuity,
 - e. Any QDRO requests received or QDRO distributions made for the plan year under examination,
 - f. Work paper showing the calculation of the benefits that were paid to the participant(s). The calculation should have the compensation that was used, the years of service, the actuarial factors that were used and should correspond to the benefit in the plan document.
3. The trust's or employer's Form 1099R's, Statement for Recipients of Total Distributions from Profit- Sharing, Retirement Plans and Individual Retirement Arrangements, for the year(s) under examination.
4. Other:

To demonstrate how the plan satisfies the deductible limits of Internal Revenue Code section 404.

1. Form __ 1120, __ 1120S, __ 1040, __ 1065 Tax return of the plan sponsor, for the year(s) under examination.
2. Cancelled checks verifying contributions made to the plan and deductions taken on the tax return. Please **reconcile** the deduction taken on the return to the contributions made to the plan.
3. Other:

To demonstrate how the plan is in compliance with the nondiscriminatory requirements of IRC section 401(a)(4), 416 and related regulations

1. Provide a list of the Highly Compensated Employees as defined in Internal Revenue Code section 414(q).
2. Please demonstrate how the plan satisfies either a Safe Harbor (Income Tax Regulation 1.401(a)(4)-3(b)) or the General Test (Income Tax Regulation 1.401(a)(4)-3(c)).
3. Please provide the top heavy ratio calculation as defined in Internal Revenue Code section 416(g).
4. Other:

To determine if the plan has met the minimum funding requirements of IRC section 412.

1. Please provide the Actuarial Valuations for the year under examination, the prior year and the subsequent year.
2. Other:

The following items are being requested to examine the operation of the trust including determining the ownership, existence and fair market value of trust assets and whether the provisions of IRC sections 72, 401(a)(2), 513, 514 or 4975 are being complied with.

1. Evidence of a fidelity bond for all people handling trust assets as required by ERISA section 412(a).
2. Supporting documents for all plan assets and liabilities, such as broker's statements, bank statements, stock certificates, insurance contracts, loan documents, deeds, etc.
3. Trustee's or administrator's reports; ledgers; journals; trustee committee, investment committee minutes; certified audit report, and other financial reports for the trust. Any other financial reports including receipt and disbursement statements, a detailed income statement and a detailed balance sheet.
4. Other:

Cash Balance Plan**Please have the following items available during the examination:****A. To document plan provisions, ensure that the plan is qualified in form and verify filings.**

1. The plan document, the trust, and all amendments related to year under examination.
2. The most recent IRS determination letter that applies to the year(s) under examination any special demonstrations submitted with your determination letter applications.
3. If you are using a prototype plan, a copy of the IRS opinion letter issued to the sponsor of the prototype plan, the plan document and adoption agreement.
4. Form 5500 or 5500-C, Annual Return/Report of Employee Benefit Plan, for each year under examination and any succeeding year. Please be sure to include all schedules filed, such as Schedules, A, B, and SSA, if applicable.
5. Forms 5500 or 5500-C, Annual Return/Report of Employee Benefit Plan, for any other deferred pension plans the employer had during each year under examination
6. The summary plan description (SPD), summaries of all material modifications (SMM), and summary annual reports (SAR).
7. Other:

B. To determine if the plan satisfies the Eligibility and Coverage requirements of Internal Revenue Code (IRC) section 410, please provide the following:

1. The employer's payroll records that were used to decide employees' eligibility to take part in the plan for the year(s) under examination, such as time cards, personnel records, and employment contracts. Also include a copy of the Forms 940: Employer's Annual Federal Unemployment Tax Return; 941: Employer's Quarterly Federal Tax Return; and W-2s, Wage and Tax Statement and related W-3. **These records must show the dates of hire, dates of participation and hours worked during the eligibility compensation period.**
2. Participant census reports and /or valuation reports.

3. A list of all plan participants for the plan year(s) ending _____, as well as a list of all employees who are not in the plan and the reason why they are not in the plan.
4. A demonstration outlining how the plan satisfied the minimum coverage requirements of IRC 410(b).
5. Other:

C. To determine if the plan is in compliance with the vesting, distribution, and limitation on benefit requirements of IRC sections 401(a)(9), 401(a)(11), 401(a)(31), 411, 415 and 417.

1. Please provide a list of the plan participants who were active participants (accrued a benefit) in the prior year but were not active in the year under examination.
2. The 5500, line _____ indicates that \$ _____ was paid to plan participants:
 - a) Please provide a list of these participants,
 - b) Their dates of hire and dates of termination
 - c) Proof of payment and/or proof of rollover,
 - d) Spousal consent forms to waive the Qualified Joint & Survivor form of benefit if the Benefit was not paid in the form of a Qualified Joint & Survivor Annuity,
 - e) Any QDRO requests received or QDRO distributions made for the plan year under examination,
 - f) Work paper showing the calculation of the benefits that were paid to the participant(s). The calculation should have the compensation that was used, the years of service, the actuarial factors that were used and should correspond to the benefit in the plan document.
3. Please provide a demonstration and explanation as to how the plan satisfies the rate of accruals under IRC section 411(b)(A)(B) and (C), the protection of accrued benefits as required under IRC 411(d)(6), and the prohibition against the reduction of benefit accruals because of age under IRC 411(b)(1)(H).
4. The trust's or employer's Form 1099Rs, Statement for Recipients of Total Distributions from Profit Sharing, Retirement Plans and Individual Retirement Arrangements, for the year(s) under examination.
5. Other:

D. To demonstrate how the plan satisfies the deductible limits of Internal Revenue Code section 404.

1. Form __1120,__1120S,__1040,__1065 Tax return of the plan sponsor, for the year(s) under examination.
2. Cancelled checks verifying contributions made to the plan and deductions taken on the tax return. Please **reconcile** the deduction taken on the return to the contributions made to the plan.
3. Other:

E. To demonstrate how the plan is in compliance with the nondiscriminatory requirements of IRC section 401(a)(4), 416 and related regulations

1. Provide a list of the Highly Compensated Employees as defined in Internal Revenue Code section 414(q).
2. Please demonstrate how the plan satisfies either a Safe Harbor (Income Tax Regulation 1.401(a)(4)-3(b)) or the General Test (Income Tax Regulation 1.401(a)(4)-3(c)).
3. Please provide the top heavy ratio calculation as defined in Internal Revenue Code section 416(g).
4. Other:

F. To determine if the plan has met the minimum funding requirements of IRC section 412.

1. Please provide the Actuarial Valuations for the year under examination, the prior year and the subsequent year.
2. Other:

G. The following items are being requested to examine the operation of the trust including determining the ownership, existence and fair market value of trust assets and whether the provisions of IRC sections 72, 401(a)(2), 513, 514 or 4975 are being complied with.

1. Evidence of a fidelity bond for all people handling trust assets as required by ERISA section 412(a).
2. Supporting documents for all plan assets and liabilities, such as broker's statements, bank statements, stock certificates, insurance contracts, loan documents, deeds, etc.
3. Trustee's or administrator's reports; ledgers; journals; trustee committee, investment committee minutes; certified audit report, and other financial reports for the trust. Any other financial reports including receipt and disbursement statements, a detailed income statement and a detailed balance sheet.
4. Other:

Employee Stock Ownership Plan (ESOP)

Please have the following items available during the examination:

- A. To document plan provisions and ensure that the plan is qualified in form and to verify filings.**
1. The plan document, the trust, and all amendments that relate to the year under examination.
 2. The most recent IRS determination letter that applies to the year(s) under examination, the related Forms 5300 and 5309 and any special demonstrations submitted with your determination letter applications.
 3. If you are using a prototype plan, a copy of the IRS opinion letter issued to the sponsor of the prototype plan, the plan document and adoption agreement.
 4. Form 5500 or 5500-C, Annual Return/Report of Employee Benefit Plan, for each year under examination, the preceding year and succeeding year. Please be sure to include all schedules filed including Schedule E, ESOP Annual Information.
 5. Forms 5500 or 5500-C, Annual Return/Report of Employee Benefit Plan, for any other qualified retirement plans the employer sponsored during each year under examination.
 6. The summary plan description (SPD), summaries of all material modifications (SMM), and summary annual reports (SAR).

7. Other:

B. To determine if the plan satisfies the Eligibility and Coverage requirements of Internal Revenue Code (IRC) section 410, please provide the following:

1. The employer's payroll records that were used to decide employees' eligibility to take part in the plan for the year(s) under examination, such as time cards, personnel records, and employment contracts. Also include a copy of the Forms 940, Employer's Annual Federal Unemployment Tax Return; 941, Employer's Quarterly Federal Tax Return; W-2s, Wage and Tax Statement and related W-3. **These records must show the dates of hire, dates of participation and hours worked during the eligibility computation period.**
2. Participant allocation schedules, employee census reports and or valuation reports.
3. A list of all plan participants for the plan year(s) ending _____, as well as a list of all employees who are not participating in the plan and the reason why they are not.
4. A demonstration outlining how the plan satisfied the minimum coverage requirements of IRC 410(b).
5. Other:

C. To determine if the plan satisfies the Vesting and Distribution requirements of IRC sections 401(a)(9), 401(a)(11), 401(a)(31), 411, 417 and the unique ESOP requirements of IRC section 409:

1. Please provide a list of the plan participants who were active participants (received an allocation) in the prior year but were not active in the year under examination.
2. The Form 5500, line _____, indicates that \$_____ was paid to plan participants:
 - a) Please provide a list of these participants,
 - b) Their dates of hire and dates of termination,
 - c) Proof of payment and/or proof of rollover,
 - d) Spousal consent forms to waive the Qualified Joint & Survivor form of benefit if required,
 - e) Any QDRO requests received or QDRO distributions made for the plan year under examination.

3. The trust's or employer's Form 1099R's, Statement for Recipients of Total Distributions from Profit- Sharing, Retirement Plans and Individual Retirement Arrangements, for the year(s) under examination.
4. Please provide the participant election forms to demonstrate compliance with IRC sections 409(h) and 409(o). Also, the participant election forms to required comply with the diversification requirements of IRC section 401(a)(28)(B).
5. Other:

D. To demonstrate how the plan satisfies the deductible limits of IRC section 404

1. Form __1120,__1120S,__1040,__1065 Tax return of the plan sponsor, for the year(s) under examination. .
2. Cancelled checks or fund transfers verifying contributions made to the plan and deductions taken on the tax return. Please **reconcile** the deductions taken under IRC sections 404(a)(3),(a)(7), (a)(9) and 404(k) on the tax return to the contributions made to the plan.
3. Other:

E. To demonstrate that the plan is in compliance with the nondiscriminatory requirements, contribution limitation and top heavy requirements of Internal Revenue Code sections 401(a)(4), 415 and 416 respectively.

1. Please provide an allocation schedule for the year under examination and the prior plan year for this plan and any other defined contribution plan. The schedule should include the participant's compensation, the allocation of the Employer contribution, forfeitures and income.
2. Please provide the top heavy ratio calculation as defined in Internal Revenue Code section 416(g).
3. Provide a list of the Highly Compensated Employees as defined in Internal Revenue Code section 414(q).
4. Please demonstrate how the plan satisfies either a Safe Harbor (Income Tax Regulations 1.401(a)(4)-2(b)) or the General Test (Income Tax Regulations (1.401(a)(4)-2(c)).

F. The following items are being requested to examine the operation of the trust including determining the ownership, existence and fair market value of trust assets, and whether the provisions of IRC sections 72, 401(a)(2), 513, 514 and 4975 are being complied with.

1. If the plan is a leveraged ESOP under IRC section 4975(e)(7), please demonstrate how the number of shares of stock allocated to the participants in the plan were made in accordance with Income Tax Regulation 54.4975-11(d)(1) and (2).
2. Evidence of a fidelity bond for all people handling trust assets as required by ERISA section 412(a).
3. If the plan is a leveraged ESOP under IRC section 4975(e)(7), please provide the loan contract and encumbrance account. Also, supporting documents for all plan assets and liabilities, such as broker's statements, bank statements, stock certificates, insurance contracts, loan documents, deeds, etc.
4. Corporate minutes, trustee's or administrator's reports; ledgers; journals; trustee and investment committee minutes; certified audit report, and other financial reports for the trust. Any other financial reports including receipt and disbursement records of the ESOP securities and the employer securities accounts, as well as a detailed income statement and a balance sheet.
5. Please provide the independent appraisal valuation report (within the meaning of IRC section 170(a)(1)) as required by IRC section 401(a)(28)(C), if employer securities acquired by the ESOP are not readily tradable on an established securities market. This is needed for the year under examination, the prior year and the subsequent year.
6. If the ESOP holds preferred stock of the employer, please provide the corporate charter documents that stipulate the conversion formula.

Exhibit 3 – Attachment to Initial Contact Letter

The Employee Plans Examination Process

Internal Revenue Service—Tax Exempt and Government Entities (TE/GE) Division

The TE/GE Mission

To provide Tax Exempt and Government Entities customers top quality service by helping them understand and comply with applicable tax laws and to protect the public interest by applying the tax laws with integrity and fairness to all.

Introduction

The goal of Employee Plans (EP) Examinations is to promote voluntary compliance by reviewing the operation of retirement plans for consistency with plan terms and pension law. This document discusses general rules and procedures that we follow in examinations. It explains what happens during an EP examination and how certain compliance problems can be corrected.

As a taxpayer, you have the right to be treated fairly, professionally, and courteously by TE/GE employees.

Examination of Returns

EP Examinations uses a centralized case selection and review process to enhance consistency of enforcement activities and to focus resources on the areas that have the most positive impact on the private retirement system. Our activities include identifying areas of noncompliance, developing corrective strategies and assisting with those strategies.

The Examination

The examination usually begins when a specially trained agent notifies you by phone or letter that your plan has been selected. A letter confirming the audit will follow the initial contact. This letter includes a detailed list of items that you or your representative will be required to provide to complete the examination. If the items are well organized and complete we can conduct the examination more easily and in a shorter time. We may request that you provide some items before our initial appointment.

You can have someone represent you during the examination. This person must be an attorney, accountant, enrolled agent, an enrolled actuary, or the person who prepared the return and signed it as the preparer. If you choose to have someone represent you in your absence, you must furnish us with written authorization. You may use **Form 2848, Power of Attorney and Declaration of Representative**, for this authorization.

The examination may include a complete review of plan operations or may focus on specific issues.

The most common areas of review include—

1. **Eligibility, participation, and coverage**—Are eligible employees properly participating?
2. **Vesting**—Have service and vesting been properly credited?
3. **Discrimination**—Do contributions, benefits, rights or features favor highly compensated employees?
4. **Top heavy requirements**—Have minimum contributions and benefits, and accelerated vesting, been provided?
5. **Contribution and benefit limits**—Are contributions and benefits within applicable limits?
6. **Funding and deductions**—Are contributions sufficient and timely, and deductions within applicable limits?
7. **Distributions**—Are distributions properly made and timely and accurately reported?

8. **Trust activities**—Is the trust operated for the exclusive benefit of participants and in accordance with fiduciary standards?
9. **Plan and trust documents**—Does the form of the plan and trust timely meet applicable tax law?
10. **Returns and reports**—Were federal returns and reports timely and accurately filed?

Initial Interview. To begin the examination you will be asked to explain the plan's administrative practices and procedures. This will help the examiner understand your plan, focus the review, and complete the exam in a shorter time.

Information Review. The examiner will analyze your information, perform tests, and sample data for particular compliance issues. Based on this review the examiner may expand the analysis to include additional details and larger samples. The agent is expected to continue the examination until it is reasonably certain that the information return and qualification requirements have been fulfilled.

Requests for additional information. The examiner may require additional information or corrective action prior to concluding the exam. If so, the examiner will explain the reason for the request, describe the information, and provide a reasonable response time.

Closing interview. When the initial fieldwork is concluded, the examiner will explain the areas that may require your attention or corrective action.

Review process. The examiner's work is subject to a random review process for managerial, technical and procedural accuracy. If your plan is selected for review, you may experience a delay and may be required to provide additional information.

Closing letter. The final step is a letter that explains the conclusions reached by the examiner. Issues that arise are usually resolved at the examination level. Any issues that cannot be resolved by agreement will be stated in the closing letter, which will begin your time for appeal. See **Publication 1020**.

Resolving Qualification Issues—The EP Compliance Resolution System (EPCRS)

A failure to satisfy plan terms and applicable pension law may result in disqualification of the plan, including the loss of tax exempt status for the trust, loss of tax deductions for the employer, and unanticipated taxable income to participants. In most examinations, however, EP will propose alternatives that preserve tax qualified status of the plan. EPCRS is a comprehensive system of correction programs that permits plan sponsors to correct most qualification failures. These programs are generally not available if the law provides tax consequences other than disqualification of the plan.

EPCRS includes the following programs for plans that are under examination—

Self-Correction Program (SCP). A plan sponsor that has established compliance practices and procedures may, at any time, correct insignificant operational failures without paying any fee or sanction. In addition, in the case of a qualified plan that is the subject of a favorable determination letter from the IRS, or in the case of a 403(b) plan, the plan sponsor may be able to correct even significant operational failures without payment of any fee or sanction, if the correction has been substantially completed by the time you are notified that the plan has been selected for examination. All years involved must be corrected, even years not under examination or beyond the statute of limitations.

Audit Closing Agreement Program (Audit CAP). If a qualification failure has not been corrected and is not eligible for correction under SCP, the plan sponsor may be able to enter into an agreement with the IRS regarding correction of the failure and payment of a sanction. The sanction will bear a reasonable relationship to the nature, extent and severity of the failure, taking into account the extent to which correction occurred before the examination.

Appeals

If you do not agree with the examiners proposed changes, you can appeal them to the Appeals Office of IRS. Most differences can be settled without expensive and time-consuming court trials. Your appeal rights are explained in detail in both Publication 5, *Your Appeal Rights and How To Prepare a Protest If You Don't Agree*, and Publication 556, *Examination of Returns, Appeal Rights, and Claims for Refund*. If you do not wish to use the Appeals Office or disagree with its findings, you may be able to take your case to the U.S. Tax Court, U.S. Court of Federal Claims, or the U.S. District Court where you live. If you take your case to court, the IRS will have the burden of proving certain facts if you kept adequate records to show your tax liability, cooperated with the IRS, and meet certain other conditions. If the court agrees with you on most issues in your case and finds that our position was largely unjustified, you may be able to recover some of your administrative and litigation costs. You will not be eligible to recover these costs unless you tried to resolve your case administratively, including going through the appeals system, and you gave us the information necessary to resolve the case.

Comments and Suggestions

We welcome your comments and suggestions about this document and your suggestions for future editions. [You can e-mail us with your comments while visiting our web site at www.irs.gov/ep.]

Useful Items You may want to see —

IRS Publications

Publication 1, Your Rights as a Taxpayer

- 556** Examination of Returns, Appeal Rights, and Claims for Refund
- 560** Retirement Plans for Small Business
- 571** Tax-Sheltered Annuity Programs for Employees of Public Schools and Certain Tax-Exempt Organizations
- 575** Pension and Annuity Income
- 590** Individual Retirement Arrangements (IRAs)
- 1020** Appeal Procedures for Employee Plans Examinations

Tax Information

TE/GE provides a great deal of free information. The following are sources for forms, publications, and additional information.

EP Questions: 1-877-829-5500

Forms and Publications: 1-800-829-1040

Internet: www.irs.gov/ep

